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Governor

State of Utah
Department of Transportation

John R. Njord, P.E.
Executive Director

October 27, 2003

Mr. Gregory M. Simonsen
Rinehart Simonsen & Fetzer
4 Triad Center, Suite 800
305 West North Temple
Salt Lake City, UT 84180

Subject: Findings and Order - File No. 03-0757 & 3-0758 Richfield City Signs

Dear Mr. Simonsen:

Enclosed are the Findings and Order of the Hearing Officer based on a review of the information submitted by all parties. We appreciate your time and effort in working with us in this matter. I remind you that should you desire to pursue your appeal further that you have 30 days to file a court action.

Sincerely,

David K. Miles, P. E.
Hearing Officer

DKM:js

cc: Jim Beadles
Mark Burns
Roger Scovil
Fran Rieck



FINDINGS AND ORDER

Reagan Outdoor Advertising v. Region 4
03-0757 & 03-0758 Richfield City
(I-70 near Richfield City, mileposts 41.4 and 35.8)

FINDINGS

Reagan Outdoor Advertising (Reagan) appeals Region 4's denial of two permit applications for signs located near Richfield, Utah on I-70 at mileposts 41.4 and 35.8. Reagan also appeals the Region's simultaneous issuance of notices that signs at those locations wrongfully encroached on UDOT right-of-way due to lack of a permit.

In March, 2001, Reagan submitted applications for these two signs. Richfield City was already using one side of each sign; Reagan wished to use the other sides for advertising purposes. Though Reagan never received a permit, it began using the blank side of the signs for advertising, apparently based on an alleged verbal approval from Region 4 permit officer, Roger Scovil. Region 4 has not admitted that Mr. Scovil ever made this representation and Reagan presents no proof that he ever did.

This appeal raises two questions. First, whether the Region erred when it issued the notices of violation. Second, whether the Region erred when it denied the permit applications themselves. These questions are independent of each other.

Notices of Violation

A notice of encroachment should be issued only when an advertising company is advertising illegally. The essential question is whether the advertiser had the legal authority, i.e., a permit, to advertise on state right-of-way. Here, that question is fairly

easily answered. Even assuming that any person in Region 4 orally approved Reagan's permit requests, that approval would not have given Reagan authority to advertise on UDOT right-of-way. Utah Code Ann. § 72-7-503(1) makes it unlawful for any person to advertise "without first receiving a permit from the department." Use of the words "a permit" clearly indicates that the applicant must receive something tangible, i.e., a document or license of some sort. Mere oral "permission" does not suffice. Reagan never claims that it received any such document. Consequently, Region 4's violation notices are appropriate because Reagan did not have a permit before it began advertising at milepost 41.4 and 35.8 on I-70.

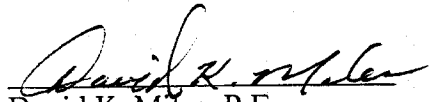
Denial of Permit Applications

The second issue in this appeal is whether the Region properly denied Reagan's application for sign permits. Deciding that requires a look at the area's zoning and the analysis of other factors, all of which are spelled out in Utah's Outdoor Advertising Act, Part 5, Chapter 7, Title 72, Utah Code Annotated. Mileposts 41.4 and 35.8 on I-70 are apparently within an area that is zoned agricultural. By definition then, the area is not part of a commercial and industrial zone. Utah Code Ann. § 72-7-502(1)(a) (agriculturally-zoned areas excepted from commercial and industrial zone).

Consequently, Reagan is not entitled to advertise at these sites under the part of the code that allows for advertising in commercial and industrial zones. Utah Code Ann. § 72-7-504(1)(d). Because Reagan's proposed signs do not appear to merit a permit under any other part of Section 72-7-504, the company is not entitled to a permit at all.

ORDER

I affirm Region 4's denial and notices of violation. If you wish to appeal this decision, you may do so by filing a complaint in district court within 30 days of this order. Utah Code Ann. § 63-46b-15. Alternatively, you may request reconsideration by filing a petition with UDOT within 20 days. Utah Admin. Code R907-1-5 (2003).



David K. Miles, P.E.
UDOT Hearing Officer